Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Notice of Inquiry Concerning a Review	)	
Of the Equal Access and Nondiscrimination	)	CC Docket No. 02-39
Obligations Applicable to Local Exchange	)	
Carriers	)	
	)	

REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA),[1] through the undersigned and pursuant to Federal Communications Commission (FCC) Rules 1.415 and 1.419,[2] hereby submits its reply comments in response to the FCC's *Equal Access NOI*[3] in the above-docketed proceeding. In the *Equal Access NOI*, the FCC seeks comment on the current state of equal access and nondiscrimination obligations of Bell Operating Companies (BOCs),[4] incumbent independent local exchange carriers (Independent ILECs), and competitive local exchange carriers (CLECs).[5] The FCC also seeks comment on what these obligations should be for BOCs, Independent

[1] USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA represents over 670 carrier members that provide a full array of voice, data and video services over wireline and wireless networks. USTA members support the concept of universal service, and its carrier members are leaders in the provision of advanced telecommunications services to American and international markets.

[2] 47 C.F.R. §§ 1.415 and 1.419.

[3] *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, FCC 02-57, Notice of Inquiry (rel. Feb. 28, 2002) (*Equal Access NOI*).

[4] The FCC seeks comment on these obligations for BOCs with and without section 271 authority.

[5] *Equal Access NOI* at ¶¶12, 19, and 20.

ILECs, and CLECs, given the legal and marketplace changes that have occurred since equal access and nondiscrimination obligations were adopted.[6]

SUMMARY

The FCC conducts this inquiry into the continued importance of the equal access and nondiscrimination obligations of section 251(g) in light of its goals to facilitate competition, deregulation, and innovation; to establish an equal access and nondiscrimination regime that will benefit consumers; to balance regulatory costs against the benefits of such a regime; and to harmonize the equal access and nondiscrimination requirements of similarly-situated carriers.[7] These goals can be accomplished by ensuring that carriers offering reasonably comparable services are regulated on a parity basis. Such parity can be achieved through the elimination of the redundant requirements of section 251(g) and through the elimination of unnecessary marketing restrictions and notification requirements of interexchange carrier (IXC) options. The FCC can effectuate these changes in equal access and nondiscrimination requirements by issuing an Order in this proceeding, using the accumulated record upon which to made a decision, or in the alternative, by forbearing from these redundant and unnecessary requirements.

DISCUSSION

I. Numerous Provisions in the Act Require Equal Access and Nondiscriminatory Treatment

The FCC notes that section 251(g) imposes on BOCs and Independent ILECs equal access and nondiscrimination obligations that existed prior to the Telecommunications Act of 1996 (1996 Act), and notably imports obligations for BOCs from the Modification of Final

[6] *Id*. at ¶¶13, 19, and 20.

[7] *Id*. at ¶2.

Judgment (MFJ) when the Department of Justice settled the antitrust suit against AT&T.[8] The FCC explains that "section 251(g) preserves the equal access obligations that the BOCs and GTE had in their consent decrees,"[9] but it seeks comment on "whether the goals underlying section 251(g) can be achieved through any other means"[10] and whether these obligations from the consent decrees or other obligations in FCC regulations, orders, or policies apply to Independent ILECs.[11]

Any requirements of continuing merit from the MFJ or obligations pre-existing the 1996 Act, which were carried over in section 251(g), have been and continue to be covered in other statutory provisions of the Communications Act of 1934, as amended (Act). More specifically, the requirements of section 251(g) duplicate other requirements in the Act to interconnect (*i.e.*, sections 201 and 251(a)),[12] to refrain from discrimination (*i.e.*, sections 202, 272(c), and 272(e)),[13] and to provide dialing parity (*i.e.*, section 251(b)(3)).[14] With the exception of sections 272(c) and 272(e), the requirements to interconnect, to refrain from discrimination, and to provide dialing parity are fully provided for in these other numerous provisions of the Act and apply equally to BOCs, Independent ILECs, and CLECs.

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[8] *Id*. at ¶3 and ¶19.

[9] *Id*. at ¶5.

[10] *Id*. at ¶11.

[11] *Id*. at ¶19.

[12] Section 201(a) requires common carriers to establish physical connections with other carriers and section 251(a) requires all telecommunications carriers to interconnect with other telecommunications carriers.

[13] Section 202(a) prohibits common carriers from discriminating against or giving preferences to other carriers; section 272(c) prohibits BOCs from discriminating in favor of their affiliates and other entities; section 272(e) requires BOCs and their affiliates to provide other carriers with facilities, services, and information on the same terms and conditions that they provide to each other.

II. The Requirements of Section 251(g) Are Not Necessary and Should Be Rescinded

USTA agrees with the comments of Verizon that the "equal access and nondiscrimination obligations continued by section 251(g) are no longer relevant"[15] and that the "Act contains other provisions that impose 'equal access' and 'nondiscriminatory interconnection' obligations."[16] Likewise, USTA agrees with SBC's comments that "there is no reason to maintain superfluous articulations of the same obligations" found elsewhere in the Act.[17] The elimination of the section 251(g) requirements does not diminish these obligations. As common carriers, telecommunications carriers, and local exchange carriers, BOCs, Independent ILECs, and CLECs are obligated to comply with the requirements of sections 201, 202, 251(a), and 251(b)(3). In addition, BOCs must comply with the requirements of section 272(c) until their obligation to maintain separate affiliates sunsets. Even after such sunset, BOCs remain subject to the requirements of section 272(e). Many of the equal access and nondiscrimination protections that were encompassed in the MFJ and that pre-dated the 1996 Act were codified in the 1996 Act;[18] others were already provided for in the Act.[19] With these equal access and nondiscrimination protections squarely in place throughout numerous sections of the Act, section 251(g) imposes redundant requirements, is not necessary, and should be eliminated.

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[14] Section 251(b)(3) requires all local exchange carriers to provide dialing parity to competing providers of telephone exchange service and telephone toll service.

[15] Verizon Comments at 1.

[16] *Id*. at 9.

[17] SBC Comments at 6.

[18] The interconnection obligations of section 251(a), the dialing parity obligations of section 251(b)(3), and the nondiscrimination obligations of sections 272(c) and 272(e) were added by the 1996 Act.

[19] The interconnection obligations of section 201 and the nondiscrimination obligations of section 202 were already required prior to the implementation of the 1996 Act.

III. Regulatory Parity Is Necessary to Facilitate Competition in the Interexchange Market

The FCC seeks comment on what marketing obligations should be imposed on BOCs and what marketing activities are permissible for BOCs.[20] To address these questions, the FCC must acknowledge the convergence of different modes of local competition, specifically wireless, cable, and CLEC facilities, which affirms the notion that local service is no longer a natural monopoly.[21] Such recognition dictates that the marketing restrictions on BOCs regarding their provision of interexchange services and the other requirements that BOCs provide new customers with IXC information, which arose from the MFJ and which continue to be imposed on BOCs, should be eliminated. Indeed, the 1996 Act specifically entitles BOCs that have obtained section 271 authority to market and sell the interexchange services of their affiliates.[22] Despite this, BOCs are limited by regulations to which other carriers are not subject. Unlike their nondominant competitors, BOCs are prohibited from marketing interexchange services offered by their affiliated IXCs, from bundling local and interexchange services, and from offering discounts on such bundled services. In addition, BOCs are further limited by an affirmative obligation to identify, and essentially promote, the interexchange services of all available IXCs to new customers.

The playing field in the market for interexchange services is already uneven, favoring BOCs' nondominant competitors. Now these competitors want to skew the advantage even further by imposing additional regulatory burdens on BOCs – requiring them to identify and

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[20] *Equal Access NOI* at ¶¶14-16.

[21] Notably, in addressing an appeal from the FCC's *Line Sharing Order*, the Court of Appeals acknowledges and cites to FCC findings of intermodal competition in broadband services. *See USTA v. FCC*, 2002 U.S. App. LEXIS 9834, at *37-38 (D.C. Cir. May 24, 2002). The FCC should similarly acknowledge the existence of intermodal competition for local services.

[22] *See* 47 U.S.C. §272(g)(2).

promote the interexchange services of all available IXCs to **all** customers (e.g., to customers who already have telephone service, but who are merely making a service change or adding a telephone line), not just to new customers.[23] Additional regulation is clearly contrary to the FCC's stated goals[24] and is not necessary. Rather, the FCC should take the deregulatory and pro-competitive action of finding that section 272(g)(2) means just what it states – BOCs with section 271 authority may market and sell the interexchange services of their IXC affiliates – and that there is no need to require BOCs or Independent LECs to identify and promote the interexchange services of non-affiliated IXCs.

The FCC should find that BOCs with section 271 authority can operate just as their nondominant competitors do – they can market their local services and the interexchange services of their affiliated IXCs, bundle these services, and offer discounts where they see fit.[25] The FCC need not compile a list of permissible marketing activities. If there are any concerns about inappropriate or unlawful marketing, such concerns can be raised as complaints and resolved according to the FCC's rules. In addition, the FCC should eliminate the archaic requirement that BOCs, whether they have section 271 authority or not, identify all available IXCs for new customers. The interexchange services market has been fully competitive for many years now and consumers are savvy about the fact that they have options when choosing an interexchange services provider. There simply is no need to treat BOCs disparately from their nondominant competitors. Finally, the FCC should continue to permit BOCs, even when they do not have section 271 authority, to partner with non-affiliated IXCs to offer a service that includes

[23] *See* AT&T Comments at 28, WorldCom Comments at 4-5, ASCENT Comments at 12.

[24] *See Equal Access NOI* at ¶2.

[25] When BOCs are no longer required to maintain a separate affiliate to offer interexchange services, but can offer such services on an integrated basis, they should continue to be treated like their nondominant competitors.

interexchange services – as it did in the *1-800-54NYNEX Order* – so long as the BOCs do not violate section 271 requirements.[26]

IV. The FCC May Use the Accumulated Record to Issue an Order, or in the Alternative, Use Its Authority to Forbear, to Effectuate Changes in Equal Access and Nondiscrimination Requirements

The FCC may use the adequate record it has accumulated from the *Notice of Inquiry* in this proceeding to engage in reasoned decision-making, using the requirements of sections 201, 202, 251(a), 251(b)(3), 272(c), and 272(e) as a basis for issuing an Order that will effectuate changes in equal access and nondiscrimination requirements. More specifically, the FCC should issue an Order finding that the pre-existing equal access and nondiscrimination requirements that were imported through section 251(g) are no longer necessary and are rescinded. The FCC should make a further finding that any marketing regulations must only be imposed on BOCs at parity with those that are imposed by statute on nondominant carriers of local service. In the alternative, the FCC may use its forbearance authority under section 10 to make the same findings.

Respectfully submitted,

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[26] *See AT&T Corp. v. NYNEX Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 16087 (2001).

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on June 10, 2002, Reply Comments Of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the attached service list.

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